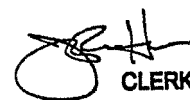


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

NOV 15 2004


CLERK

MARTA TRICKEY

Plaintiff,

vs.

CONTINENTAL CASUALTY,

Defendant

Civ. 04-5104

NOTICE OF REMOVAL

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA, WESTERN DIVISION.

Comes now, the named Defendant, Continental, by and through its attorney, Patricia A. Meyers, pursuant to 28 U.S.C. § 1441, et seq., and hereby files in the United States District Court a Notice of Removal and alleges in support thereof:

1. That this action is presently pending in the Seventh Judicial Circuit for Pennington County, South Dakota. The original Summons and Complaint were filed on October 20, 2004, at the Pennington County Clerk of Courts Office, Civil Case No. C04-854 and served upon the Defendant on October 20, 2004, through the South Dakota Division of Insurance.

2. That the United States District Court has original jurisdiction under 28 U.S.C. § 1332, as the matter, as now sued, is between citizens of different states, to-wit: Plaintiff, Marta Trickey is a resident of Pennington County, South Dakota; Defendant, as named Continental Casualty, is an Illinois corporation with its principal place of business in Chicago, Illinois.

3. That Plaintiff has requested compensatory damages in an amount to be determined at trial, punitive damages and plus attorneys fees and costs.

4. That this action involves a claim of tortious breach of contract as more fully appears in the Complaint.

5. That Defendant has given written notice of this filing of the Notice of Removal to Plaintiff's attorney, Michael Abourezk, PO Box 9460, Rapid City, South Dakota 57709; that the Notice of Removal has been served and filed within thirty days of service upon Defendant of the Summons and Complaint as required by 28 U.S.C. §1446 (b).

6. Further, a Notice of Filing of Notice of Removal has been filed with the Clerk of Courts of Pennington County, South Dakota, on the 15th day of November, 2004, all as provided by 28 U.S.C. § 1446 (d).

7. A copy of the Summons, Complaint, Admission of Service and Answer are attached hereto. No other process, pleadings or orders have been served upon this Defendant.

Wherefore, Defendant hereby requests that this action, now pending in the Seventh Judicial Circuit Court of Pennington County, South Dakota, be removed from said state court to the United States District Court for the District of South Dakota, Western Division.

Dated this 15th day of November, 2004.

COSTELLO, PORTER, HILL, HEISTERKAMP
BUSHNELL & CARPENTER LLP

By: Patricia A. Meyers
Patricia A. Meyers
Attorneys for Defendant
PO Box 290
Rapid City, SD 57709
(605) 343-2410

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing document, NOTICE OF REMOVAL, upon the person herein next designated, on the date below shown, by placing the same in the service indicated, postage prepaid, addressed as follows:

Mr. Michael Abourezk
PO Box 9460
Rapid City, SD 57709

☒ U.S. Mail
☐ Federal Express
☐ Hand delivery
☐ Facsimile Transmission

which address is the last address of the addressee known to the subscriber.

Dated this 16th day of November, 2004.

COSTELLO, PORTER, HILL,
HEISTERKAMP, BUSHNELL &
CARPENTER LLP

By: Patricia A. Meyers
Patricia A. Meyers
Attorneys for Defendant
P. O. Box 290
Rapid City, SD 57709

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF PENNINGTON

SEVENTH JUDICIAL CIRCUIT

MARTA TRICKEY,

File No.04-854

Plaintiff,

v.

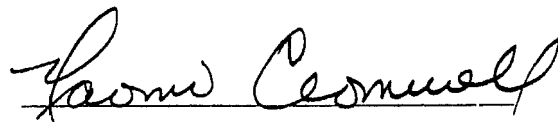
ADMISSION OF SERVICE

CONTINENTAL CASUALTY,

Defendant

Personal service of a true copy of the attached Summons and Complaint is hereby admitted by personal receipt of such copy at Pierre, S.D., on the 20th day of October, 2004.

DIVISION OF INSURANCE



BY: Naomi Cromwell, Senior Counsel
On behalf of and under the
authority of the Director

STATE OF SOUTH DAKOTA)

COUNTY OF Hughes) §

BEFORE ME, the undersigned authority, personally appeared Darla Lyons, know to me to be the person whose name is subscribed to the within instrument, and she acknowledged that she executed same for the purposes described herein.



Notary Public

My commission expires: 08-04-08
[Seal]

Pennington County, SD
FILED
IN CIRCUIT COURT

OCT 25 2004

Ranae Truman, Clerk of Courts

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF PENNINGTON

SEVENTH JUDICIAL CIRCUIT

MARTA TRICKEY,

File No.04-

Plaintiff,

v.

SUMMONS

CONTINENTAL CASUALTY,

Defendant

THE STATE OF SOUTH DAKOTA SENDS GREETINGS TO THE ABOVE-NAMED
DEFENDANT, CONTINENTAL CASUALTY:

You are hereby summoned and required to serve upon Michael Abourezk, Plaintiff's
attorney, whose address is **Abourezk Law Firm, P.O. Box 9460, Rapid City, SD 57709-9460**,
an answer to the Complaint which is herewith served upon you within thirty (30) days after
service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment
by default will be taken against you for the relief demanded in the Complaint.

Dated this 18 day of October, 2004.

By: 

Mike Abourezk.

ABOUREZK LAW FIRM

Attorneys for Plaintiff

Post Office Box 9460

117 Knollwood Drive

Rapid City, South Dakota 57709

(605) 342-0097

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF PENNINGTON

SEVENTH JUDICIAL CIRCUIT

MARTA TRICKEY,

File No.04-

Plaintiff,

v.

COMPLAINT

CONTINENTAL CASUALTY,

Defendant.

Comes now the plaintiff and for her complaint states as follows:

1. She is a resident of Rapid City, South Dakota and on January 11, 2002, was employed by a business known as Orange Julius in Rapid City, South Dakota.
2. The defendant is an insurance company and claims administrator which handled the worker's compensation claims for plaintiff's employer, Orange Julius during all relevant time periods.
3. On January 11, 2002, plaintiff suffered a work injury while acting in the course and scope of her employment at Orange Julius.
4. Plaintiff suffered a severely comminuted fracture of the left wrist area.
5. As a result of her injury, plaintiff lost significant use of her left wrist with restrictions in range of motion and strength.
6. As a result of this injury, plaintiff's physician assigned a 10% permanent partial disability rating.
7. The assignment of the permanent partial impairment rating triggers insurance benefits under the worker's compensation laws of the State of South Dakota, in an amount of \$4,680.
8. Defendant refused to pay the amount due and owing for permanent partial impairment.
9. Defendant had no reasonable basis for denial of this claim, and either knew or should have known that it lacked a reasonable basis for denial of the claim.

10. Defendant failed to conduct a fair and reasonable investigation.
11. Defendant failed to communicate or act reasonably in responding to inquiries from the plaintiff or her representatives about the claim.
12. Defendant delayed payment of the amounts due and owing for over a year, with no reasonable basis and without proper investigation of any reasonable basis.
13. When the defendant did finally agree to pay the amounts owing, defendant also sought to protect itself from claims of bad faith by inserting a release of plaintiff's rights to sue for bad faith into the release.
14. Defendant denied the claim with malice and/or oppression and/or a reckless disregard of the rights of the plaintiff.
15. As a proximate result of defendant's wrongful conduct, plaintiff has been damaged as follows:
 - a. She has incurred debts for attorneys fees, state service taxes, and out of pocket costs in an amount of \$1,526.15.
 - b. She experienced financial and emotional distress.

WHEREFORE, plaintiff seeks an award of compensatory and punitive damages to be determined by the jury and in accord with the proof produced at trial. Plaintiff also seeks her costs and disbursements in this action as allowed by law.

Dated this 18 day of October, 2004.

By: 

Mike Abourezk.

ABOUREZK LAW FIRM

Attorneys for Plaintiff

Post Office Box 9460

117 Knollwood Drive

Rapid City, South Dakota 57709

(605) 342-0097

PLAINTIFF HEREBY REQUESTS A JURY TRIAL

By: 

Mike Abourezk.